IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 4365 of 2002(T)

PETITIONERS:
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1. VALSALAKUMARI, D/O.SAROJINI,
AGED 39, T.C.NO. 34/438, CHANGUMUGHAM,
TRIVANDRUM.

2. SURENDRAN, S/O. SANKARAN, AGED 46,
-DO- -DO-

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:
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1. STATE OF KERALA, REP.BY THE
CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

2. THE EXCISE COMMISSIONER, TRIVANDRUM.

3. THE CIRCLE INSPECTOR OF POLICE,
POZHIYOOR POLICE STATION, TRIVANDRUM.

4. THE SUB INSPECTOR OF POLICE,
KANJIRAMKULAM, TRIVANDRUM.

5. THE SUB INSPECTOR OF POLICE,
POZHIYOOR, TRIVANDRUM.

6. THE SUB INSPECTOR OF POLICE,
POOVAR, TRIVANDRUM.

7. C.CHANDRAMOHAN,
S/O. CHANDRASEKHARA PANICKER, T.C. 48/245,
AMBALATHARA, MUTHATHARA VILLAGE, TRIVANDRUM.

BY PUBLIC PROSECUTOR
GOVERNMENT PLEADER SRI.P.N.SANTHOSH
SRI.BECHU KURIAN THOMAS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, ALONG WITH OP NO. 20611 OF 2000 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.4365/2002

ORDER ON CMP. NO.7764/2002 IN OP. NO.4365/2002

DISMISSED

23.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LICENCE AGREEMENT EXECUTED IN FAVOUR OF PETITONERS AND 7TH RESPONDENT DT. 1.4.99.

EXT.P2:- COPY OF THE PETITION DT. 20.5.99 SUBMITTED BY THE PETITIONERS.

EXT.P3:- COPY OF THE AGREEMENT DT. 28.5.99 WAS ENTERED INTO BY THE 7TH RESPONDENT AND THE PETITIONERS.

EXT.P4:- COPY OF THE JOINT PETITION DT. 28.5.99 FILED BEFORE THE 2ND RESPONDENT BY THE PETITIONERS AND 7TH RESPONDENT.

EXT.P5:- COPY OF THE FINAL REPORT IN FIR NO.49/99 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA.

EXT.P6:- COPY OF THE CHARGE SHEET IN CRIME NO.47/99 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA.

EXT.P7:- COPY OF THE CHARGE SHEET IN CRIME NIO.48/99 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, NEYYATTINKARA.

EXT.P8:- COPY OF THE FINAL REPORT IN CRIME NO.40/99 FIR NO.40/99 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA.

EXT.P9:- COPY OF THE FINAL REPORT IN CRIME NO.30/99, CC.609/01 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, NEYYATTINKARA.

EXT.P10:- COPY OF THE FINAL REPORT IN CRIME NO.20/2000 CC.187/01 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, NEYYATTINKARA.

OP. NO.4365/2002

EXT.P11:- COPY OF THE FINAL REPORT IN CRIME NO.21/2000 CC. NO.185/01 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRTE COURT-II, NEYYATTINKARA.

EXT.P12:- COPY OF THE FINAL REPORT IN CRIME NO.3/2000, CC. 608/2000 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA.

EXT.P13:- COPY OF THE FINAL REPORT IN CRIME NO.8/2000 , CC. 719/2000 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA.

EXT.P14:- COPY OF THE OP. 20611/2000 FILED BEFORE THIS HONOURABLE COURT BY THE PETITIONRS ON 20.7.2000.

EXT.P15:- COPY OF THE OP . NO.18328/01 FILED BY THE 7TH RESPONDENT BEFORE THIS HONOURABLE COURT ON 15.6.01.

EXT.P16:- COPY OF THE ORDER ON CMP. NO.295218/01 IN OP. NO.18328/01 DT. 21.6.01 OF THIS HONOURABLE COURT.

EXT.P17:- COPY OF THE OP. 34932/01 FILED BY THE 7TH RESPONDENT BEFORE THIS HONOURABLE COURT ON 12.11.01.

EXT.P18:- COPY OF THE ORDER ON CMP. NO.57032/01 IN OP. NO. 34932/01 DT. 19.11.01OF THIS HONOURABLE COURT.

EXT.P19:- COPY OF THE CHARGE IN CRIME NO.90/99 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, NEYYATTINKARA.

EXT.P20:- COPY OF THE PROCEEDINGS NO.B2/THIRUPURAM 18-25/99-2000 DT. 5.5.01.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.4365 OF 2002

Dated this the 23rd day of October, 2007

JUDGMENT

The issue raised in this writ petition is apparently covered in favour of the writ petitioner by the judgment of this Court in O.P.No.18328/01 dated 12.10.2004. The final reports against the petitioner therein, who is the 7th respondent herein, are quashed. This Court had clearly concluded that a violation referable to the statutory provisions alone could be sustained in a prosecution and one could not be prosecuted for the violation of the provisions of the Excise Manual, which are non-statutory. Following that judgment, to which I am in complete agreement, this writ petition is allowed quashing the impugned final reports in so far as it relates to the writ petitioners.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.4365 OF 2002

JUDGMENT

23rd OCTOBER, 2007.

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